



SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

AUG 31 2011

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for your inquiry regarding Department of Defense (DoD) support for the Consular Notification Compliance Act of 2011, S. 1194, and for introducing this important legislation.

DoD fully supports the Consular Notification Compliance Act, and recognizes its importance for ensuring the protection of U.S. forces, DoD civilian employees, and DoD contractor employees should they be taken into the custody of foreign governments abroad. DoD has a strong interest in ensuring that foreign countries comply with their obligations toward U.S. nationals under the Vienna Convention on Consular Relations (Vienna Convention) and comparable bilateral consular agreements, as well as in ensuring that equivalent protections are provided to foreign military personnel when they travel to the United States. By communicating that the United States takes seriously its obligations to ensure consular protection to foreign military personnel and other foreign nationals in the United States, and by strengthening U.S. compliance with these obligations, we are best positioned to ensure that U.S. forces personnel and other members of the DoD family will benefit from these protections abroad.

DoD presently has tens of thousands of U.S. forces personnel stationed or deployed abroad, many with accompanying family members. In addition, thousands of U.S. citizen DoD civilian employees and DoD contractor employees, also with accompanying family members, are also stationed or deployed overseas in support of U.S. forces personnel. U.S. forces personnel travel even more broadly, whether to participate in training and capacity building programs, joint exercises, consultations, or government meetings, and for other non-operational activities. In many countries where DoD personnel are located, we have negotiated Status of Forces Agreements (SOFAs) that provide important protections for members of the Armed Forces, DoD civilian personnel, and their family members. These SOFAs vary in their substance and detail,



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including in the scope of the protections provided. Nevertheless, the consular notification and access regime plays an important role in protecting all DoD personnel overseas, for several reasons.

First, the United States has not entered into SOFAs with a number of countries in which DoD personnel are assigned. In such countries, the Vienna Convention and comparable bilateral consular agreements provide the sole legal mechanism by which the U.S. Government can ensure that it is provided timely notification of the detention of U.S. nationals, including DoD personnel, and is thus able to provide them assistance and protection.

Second, even in countries with which we have entered into a SOFA, the Vienna Convention serves as an important complementary layer of protection for DoD personnel arrested or detained by the host country's authorities. Although many SOFAs provide DoD personnel immunity from criminal prosecution in the host country's courts, or for DoD custody of DoD personnel who may be subject to host nation jurisdiction, they do not always clarify the foreign government's obligation to notify the United States if a DoD employee is temporarily or mistakenly detained. In these cases, the United States may only learn of the detention through the consular notification process established in the Vienna Convention and comparable bilateral agreements. Even in countries where SOFAs require notification of military authorities upon detention by host nation officials of DoD personnel, DoD personnel in foreign custody are also entitled to consular notification and visitation, and U.S. State Department consular services are counted on to provide such visitation and other assistance. These services may be required to supplement the assistance of the military command, or if the detained individual simply wants consular assistance. Department of Defense Directive No. 5525.1 (Aug. 7, 1979), "Status of Forces Policy and Information," ¶ 4.10.3. Some services, such as helping to arrange transfers to U.S. custody through prisoner transfer agreements, would only be provided by the State Department as consular services.

Third, SOFAs do not necessarily extend to all DoD personnel present in a particular country. In most instances, the protections guaranteed under a SOFA extend only to DoD personnel who are in a particular country on official Department business. U.S. forces personnel who travel overseas for personal reasons—including U.S. forces on leave from active military duty—are not likely covered by a SOFA in such countries, and would rely exclusively on the protections guaranteed in the Vienna Convention and comparable bilateral agreements.

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Fourth, the due process provisions for DoD personnel in SOFAs do not typically extend to DoD contractor employees and their family members. Currently, thousands of U.S. national contractor employees are providing important support services to DoD around the world. These individuals typically rely entirely on consular notification under the Vienna Convention and comparable bilateral consular agreements to ensure that their rights are protected if they are detained overseas.

Finally, DoD has a significant interest in ensuring that foreign military personnel, and their family members, receive timely consular notification and access if they are detained when they travel to the United States. Each year, thousands of uniformed members of foreign militaries, and their family members, come to the United States for conferences, training courses, to study at U.S. military institutions, to participate in joint exercises, and for many other purposes. Providing such foreign military personnel with prompt consular notification and access if they should be arrested or detained here in the United States is important to DoD's ability to secure reciprocal protections for U.S. forces personnel abroad, and to ensure that the benefits to our national security provided by bringing foreign military personnel to the United States can continue. The Consular Notification Compliance Act is critical to advancing those important goals.

U.S. service members do, in fact, benefit on a regular basis from the mutual obligations undertaken by the United States and other countries around the world. In the recent past, consular assistance has proved invaluable in helping secure fair treatment in cases involving service members on active duty, DoD contractor employees, and retired service members who were detained overseas. Under Secretary of State Patrick Kennedy provided some examples of this assistance in his testimony on S. 1194 in front of the Senate Judiciary Committee on July 27, 2011.

We must do all we can to ensure that service members, our civilian personnel, our contractor employees, and their dependents are afforded consular protection. Passage of the Consular Notification Compliance Act is a critical part of that effort, and we therefore support this important legislation.

Sincerely,

